

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

Cause No. CR 02-52-GF-SEH
CV 13-48-GF-SEH

vs.

VICTOR CHARLES FOURSTAR, Jr.,

Defendant/Movant.

ORDER DISMISSING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY

On June 11, 2013, Defendant Victor Charles Fourstar, Jr. (“Fourstar”), filed a document titled “Writ of Error Audita Querela,” purporting to invoke 28 U.S.C. § 1651, the All Writs Act. He filed the motion in this case, No. CR 02-52-GF-SEH.

Fourstar states, “This is not a motion pursuant to 28 U.S.C. § 2255,” Writ (doc. 144) at 1, but it is. The only appropriate vehicle for Fourstar, who remains in custody, to challenge his conviction or sentence is a motion under 28 U.S.C. § 2255. *United States v. Gamboa*, 608 F.3d 492, 495 (9th Cir. 2010); *Carrington v. United States*, 503 F.3d 888, 890 (9th Cir. 2007). Fourstar’s remedy under § 2255 is not rendered inadequate or ineffective merely because he has already litigated a motion

to completion. *Moore v. Reno*, 185 F.3d 1054, 1055 (9th Cir. 1999) (per curiam).

The putative “writ of error” is recharacterized as a successive motion under § 2255, at least Fourstar’s third. This Court lacks jurisdiction to consider it. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). A certificate of appealability is not warranted. See Order at 1, *Fourstar v. United States*, No. 11-72234 (9th Cir. Sept. 14, 2011) (doc. 143) (denying application for authorization to file successive § 2255 motion).

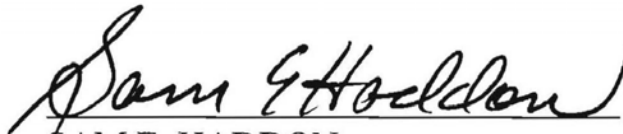
ORDERED:

1. Fourstar’s “writ of error audita querela” (doc. 144) is RECHARACTERIZED and DISMISSED as an uncertified successive motion under 28 U.S.C. § 2255.

2. A certificate of appealability is DENIED.

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 13-48-GF-SEH are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 12th day of June, 2013.


SAM E. HADDON
United States District Judge